

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 65 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJARAT ELECTRICITY BOARD

Versus

PARTNER OF JAY AMBE QUARRY WORKS

Appearance:

MR MD PANDYA for Appellant

MR MUKESH R SHAH for Respondents

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 04/09/98

ORAL JUDGEMENT

1. This is an appeal under Order 43 rule 1 CPC at the instance of the Gujarat Electricity Board which is the original defendant in the suit. The plaintiff-respondent had filed suit on various grounds, in substance challenging the disputed bill issued by the defendant-Board to the plaintiff. In the said suit, an injunction application was filed at exh. 5. The trial court after having heard the parties granted the

injunction application and restrained the defendant-Board from disconnecting the electric supply.

2. It is this order granting the injunction against the defendant which is the subject matter of the present appeal.

3. At the outset, it may be noted that disconnection was threatened for non payment of the disputed bill, which was based upon a finding of the defendant-Board that it was a case of slow running of meter. In this context, a Division Bench of this Court has laid down in a comprehensive manner, the principles to be followed by courts while dealing with such suits where claims made by the licensee (supplier of electricity) are resisted by the consumers, both in cases of theft and/or other cases of disputed bills. This is the decision in the case of Kiran Industries v. Gujarat Electricity Board, decided by a Division Bench of B.N. Kirpal, Chief Justice (as he then was) and A.N. Divecha, J., reported at 1995 (2) GLH P. 1. In this context, the Division Bench has laid down that Courts of law when exercising power under Order 39 Rule 1 & 2 CPC ought not to grant *ex parte* ad interim reliefs against the disconnection of electricity supply for non payment of a bill, except in the rarest of rare cases. Furthermore, it also lays down that, even otherwise, no interim relief against the disconnection of electricity supply should be granted without payment of the bill in dispute, and that the consumer should be directed to pay the entire bill in question to the supplier of electricity before considering the claim of the consumer for interim relief against the disconnection for non payment.

4. In view of this clear position of law, it is obvious that the trial court was in error in granting an unconditional injunction against the appellant-Board. In this context, the entire approach of the trial court was erroneous, and merely because the plaintiff had contended that section 26(6) of the Indian Electricity Act, 1910, would govern the facts of the case, such contention does not ipso facto take the case factually outside the purview of the aforesaid decision of the Division Bench. In this context, it must be noted that the checking of the meter by the defendant-Board was done on 27th April, 1997, that the supplementary bill which is in dispute in the suit was issued on 12th August, 1997, and that the plaintiff filed this suit on 21st August, 1997. It also appears from the record that the plaintiff has not, at any point of time before filing of the suit, pointed out to the Board or requested the Board to refer the meter

for testing to the Electrical Inspector under the provisions of Section 26(6) of the said Act. Section 26(6) of the said Act contemplates a situation where any difference or dispute arises " as to whether any meter referred to in sub section 1 is or is not correct" , the matter shall be decided, " upon the application of either party, by Electrical Inspector...". Obviously therefore, the dispute is to be raised by either party, and on the facts of the case, it was open to the plaintiff to have raised the dispute as regards the accuracy of the meter and to ask that the dispute be decided by the Electrical Inspector. From the facts of the case, it appears that the plaintiff has not raised such a dispute at any point of time prior to the filing of the suit. Thus on the facts and circumstances of the case, I am of the opinion that section 26(6) of the said Act cannot be resorted to by the plaintiff as a ground for non payment of the disputed bill. However, of course, such a dispute can be sought to be referred by the plaintiff to the Electrical Inspector during the course of the suit. However, if such a request is made during the pendency of the suit, that by itself would not justify the court in treating the disputed bill as nonest or without any foundation at all, which would justify an unconditional stay against the disconnection for non payment of the disputed bill.

5. However, on the facts and circumstances of the case and at this late stage and during the pendency of the suit, I am of the opinion no useful purpose is likely to be served by now reversing the said decision and then imposing conditions upon the plaintiff for continuation of the interim relief. Learned counsel for the appellant does not contest this practical aspect of the matter in the particular facts and circumstances of the case. In the premises aforesaid, the interest of justice would best be served by directing the trial court to decide the pending Special Civil Suit No. 45/97 as expeditiously as possible and in any case, not later than 31st December, 1999.

6. Before parting with the matter, I am required to observe at the instance of learned counsel for the appellant (although the same is not strictly necessary) that all observations made by the trial court in the impugned order and all findings of fact expressed as such in the impugned order must be taken and read as prima facie findings, and shall not in any way influence the trial court when deciding the suit on merits, in accordance with the evidence on record and application of correct law to such facts. The aforesaid appeal is accordingly disposed off with no order as to costs.

7. Direct service permitted.

Amp/